

Matt Murphy – IREX/IARO Research Report – Poland

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Transitional Justice and Democratic Consolidation in Eastern Europe: Comparing the Consequences of Dealing with the Past in Poland and Germany

A. Topic of Research

All new democracies must confront a series of questions about justice: Should anything be done to rectify injustices carried out under the old (non-democratic) regime? If so, *what* should be done?

These questions have been asked in nearly every region of the world in the past decade, but they are particularly salient right now in the post-communist states of Eastern Europe. Every new democracy in Eastern Europe has implemented some set of transitional justice policies since 1989, ranging from criminal trials of individuals to purging or “lustration” of former officials, to monetary and symbolic compensation of victims. There is widespread agreement that the choice of transitional justice policies must be part of a larger strategy of democratization, but little consensus beyond that. Nearly all of the existing work on this subject is normative, and argues either that extensive transitional justice policies are necessary, or that they must be avoided. Which of these arguments is most accurate? The overarching question, and the one that is the focus of my dissertation, is: *What are the effects of transitional justice policies in Eastern Europe?*

B. Relevance and Contribution to Field

The scholarly impact of my proposed research and dissertation is clear when it is placed in the context of existing social science literature. As can be seen in Neil Kritz’s (1995) three-volume compilation entitled *Transitional Justice*, most of the existing analyses of this topic are normative. The central feature in the drama of transitional justice, so to speak, is the decision of whether to punish, pardon, or enact some related policy like opening secret police files. It is not surprising, therefore, that much scholarly attention would be devoted to argumentation around that. This trend is reflected in the literature, which approaches the question from both deontological standpoints (reasoning based on moral duty, absolute individual rights, etc.) and from pragmatic or consequential standpoints (reasoning based on calculation or costs and benefits, or on the means of achieving a desired outcome).

This body of analysis, however, contains very few systematic examinations of the other side of the policy story: what happens once countries enact transitional justice policies? All the consequentialist arguments about transitional justice contain predictions about what the effects will be, or at the very least strong assumptions about those effects. It is not difficult to distill a relatively small number of predictions from the existing literature, and this is what I do in my research design. The deontological arguments concerning transitional justice are more complicated in the sense that they do not necessarily predict, or place primary importance on, particular outcomes. However, as Elster (1999) suggests, it is often the case that deontological arguments are closely allied with, or simply mask more practical considerations. Even if we take deontological arguments at face value, it is very important to investigate what effects transitional justice policies have. (For instance, if one wants to minimize the sum of rights violations in a transition period, one needs to know what new rights violations may be engendered by the policy that rectifies the old ones.)

My research project is intended to fill this gap in the literature by testing a number of hypotheses about the concrete effects of transitional justice. I derive three of the hypotheses from the assumptions and predictions found in consequentialist arguments, and one of them from my own reading of transitional justice. By testing these predictions I can make some empirically-grounded conclusions about the various consequentialist arguments, as well as uncover or illuminate important

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consequences that may not have been predicted.

An additional contribution this research makes to the field is in beginning to operationalize various facets associated with democratic consolidation. As discussed in my research proposal, the concrete hypotheses I test also parallel three areas of democratic consolidation as put forward by Linz and Stepan (1997). While I am not testing or measuring democratic consolidation, it is my hope that, if we think of my dependent variables as partial proxies for democratic consolidation, this kind of tightly focused analysis may contribute to the operationalization of what has been an extremely difficult and intractable concept.

The policy significance of this research project follows closely on the scholarly impact. All of the issues discussed above are intellectually important, but they are also all directly related to major policy choices made by new democratic governments. In fact, even in Eastern Europe these questions are still very much open to debate. As with any other policy area, such as defense, welfare, or education, it is useful for policy makers to have the clearest possible understanding of not only why they might want to pursue a policy direction, but what the impact of the policy is likely to be in their particular situation. The end product of this research project should address that need in a comparative and broadly applicable way.

Finally, this project has relevance outside of the region of Eastern Europe as well. The cases of South Africa's Truth and Reconciliation Commission and Pinochet's arrest in Britain are well known, but similar issues will arise in every authoritarian country that follows the world-wide trend toward democratic regimes. It is easy to see the impact of international organizations and communities in the South African and Chilean cases, and not difficult to imagine future circumstances where the U.S. and international organizations will be called upon to advise or recommend courses of action. Just like in-country politicians, international policy-makers will benefit from more detailed empirical knowledge of the potential impacts of their recommendations.

C. Approach and Methodology

I have approached the question through an empirical study of transitional justice policies in Poland, a country that has been distinguished for not implementing many such policies. Although the issue has been alive since the beginning of Poland's transition, attempts to pass retributive legislation have been sporadic and, until 1998, have generally stalled or failed outright. I am analyzing Poland's experience in a comparative context, with (eastern) Germany being the primary comparison, since it is generally considered to have enacted the widest and most comprehensive transitional justice policies in the region.

The first variable to be studied involves an investigation of exactly what transitional justice policies have been enacted (quantity), and how the implementation has looked (quality). This includes the number and intensity of such policies, particularly trials and screening or "lustration", as well as cataloging who controls the processes and how much discretionary authority each administering body has. The sources of this data are newspaper archives (primarily *Gazeta Wyborcza* and *Rzeczpospolita*) and the archives and staff of several institutions, including the Institute for National Memory (IPN), the Public Interest Commissioner (RIP), Constitutional Tribunal, and records of the Polish Parliament (*Sejm*).

This information by itself cannot tell the whole story about the *impact* of transitional justice, however. The second step, therefore, is to investigate three concrete areas of democratic consolidation as they relate to the data just described. Taking a three-tiered approach to democratic consolidation, I am examining the impact of transitional justice policies on a *legal* level, in the arena of *party politics*, and at the level of *civil society*. More concretely, I determine whether transitional justice has been implemented using extraordinary legal rules or bodies, and to what extent these temporary measures become regular tools of justice, or remain

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temporary. Data sources for these variables include academics and constitutional scholars, as well as the legal institutions mentioned above, politicians and Sejm records, and finally social surveys carried out by the Public Opinion Research Institute (CBOS) and others.

The broad purpose of my research is to test a number of propositions about the effects of transitional justice. My three alternative hypotheses are that more intensive policies either *help* democratic consolidation, *harm* it, or have *no significant relation* to it. My preliminary conclusion is that the real effects of transitional justice are not to be found through the three relatively abstract arguments described above, but in the way the policies are implemented. Simply put, regardless of the quantity of transitional justice policies enacted, I propose that it is in the quality of their implementation -- the partiality of interests represented, or the amount of discretion exercised by those administering the policies -- that the consequences can be seen.

D. Preliminary Findings and Conclusions

My findings are very preliminary at this stage, since I am just beginning the process of analysis that will result in my dissertation. So far, however, I have generally found the evidence to support my working hypothesis that *how* transitional justice policies are enacted (that is, how regular, broad, and transparent they are) appears to be more important for democratic consolidation than *whether* the policies are enacted at all.

E. Suggestions for Future Research Agendas

I can suggest a number of research topics that stem from my project:

- The relationship between transitional justice and the development of legal institutions in Hungary, Czech Republic, Bulgaria, Slovenia, and Romania.
- The relationship between transitional justice and the evolution of partisan relations in these same countries.
- A comparison of transitional justice policies which are initiated by NGOs or citizens' groups, versus those initiated by political parties, regarding the scope and focus of the policies.

F. Policy Recommendations

It would be premature for me to make concrete policy recommendations at this stage in my work, where I have accumulated and begun to analyze data, but have not yet written my dissertation. However, there is one general recommendation I can make at this point, concerning transitions from Communism in Eastern Europe:

- It is often assumed by outside parties, including the U.S., that at the beginning of a transition, former dissidents and the formerly persecuted are good candidates for democratic leadership because of their resistance or aversion to communism, while former communists are problematic at best. While this may be justified in very early stages of a transition, policy makers should quickly move toward support based on actions of leaders and parties, rather than on their pasts. This course of action will lead to the full inclusion of all democratically-minded parties in the political process, whether they are former dissidents or former state officials.